Filed 7/31/02 In re Arya and Ghana W. CA2/4

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re ARYA and GHANA W., Persons Coming Under the Juvenile Court Law.	B153194 (Super. Ct. No. CK14295)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. WARREN W., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, S. Patricia Spear, Judge. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and Appellant.

Lloyd W. Pellman, County Counsel and Stephanie Jo Farrell, Deputy County Counsel for Plaintiff and Respondent.

Warren W. (father) appeals from the August 27, 2001 juvenile court orders terminating dependency jurisdiction over his children, awarding custody to mother with monitored visitation for father, and restraining father from certain conduct. He claims the court abused its discretion in revoking his right to appear in propria persona. We find no abuse of discretion and affirm the orders.

FACTUAL AND PROCEDURAL SUMMARY

Father Warren W.'s two sons, Arya and Ghana, are dependents of the court pursuant to Welfare and Institutions Code section 300, subdivision (b).[1] Throughout the history of this case, the boys have been in the custody of their mother. Father has monitored visitation.

Father has filed numerous petitions for modification pursuant to section 388, seeking termination of dependency jurisdiction with a family law order giving custody to him, with monitored visits to mother. In these petitions, he also claimed there was no basis for requiring that his visits be monitored. He has not been successful in these petitions.

As of June 2001, the court had before it an outstanding section 388 petition filed by father, a section 364 proceeding to terminate dependency jurisdiction, and a rehearing on the propriety of restraining orders issued on February 22, 2001. Hearing on these matters began June 15, with father representing himself. Father called several witnesses, including his older son, Arya. During father's questioning, 10-year-old Arya became increasingly emotional and eventually began to cry.

The court stopped the proceedings and suggested to father that he allow the court to question the child in chambers. A colloquy followed regarding the

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[1] All statutory references are to this code.

problem of utilizing the procedure set out in section 350, subdivision (b) for taking a child's testimony in chambers and outside the presence of the child's parent, since father was not represented by counsel.

The court concluded it would be necessary to appoint counsel to represent father for purposes of examining the children. The court explained to father: "I'm very concerned about the children. I know you love your son. I can tell how much you love him by how gently you're talking to him. But you're putting him in the same position that you think Miss Combs [counsel for the children] and the Department's doing, and it's unwitting and part of it's because you're your own attorney. And I have to do this because I have to have a way to question your son so we can get this evidence. I can't allow you to do it. I just can't. I'll appoint an attorney."

Father objected to that procedure: "I see no way I could agree to that. I think it's not in the best interest of my son to be with a bunch of strangers. I have a good relationship with my sons. It's well documented in the file. And those attorneys have mishandled--ineffectively represented me before. I would not trust them to myself. I certainly would not trust them to my kids."

The court trailed the matter to the next court day to make an appointment, suggesting to father that he prepare questions for appointed counsel to ask. The court found it was in the child's best interest that an attorney be appointed to question him. The court noted that the child paused for a very long time between the questions and answers, that he became increasingly withdrawn, and that when father asked him to tell the court what he wants, the child shrank back in the chair.

Father was asked if he had a preference as to which of the three attorneys who had previously represented him should be appointed. He requested attorney Mike Kretzmer, who had represented him on another case, and the court made that

appointment. At the first hearing after the appointment, father asked that Mr. Kretzmer be relieved because he and father had a conflict of interest. Father also objected to having other counsel appointed for him, arguing that his son's crying did not show that father did something wrong or that he should be "removed as counsel and representing my sons."

The court corrected him: "You don't represent your son; you represent yourself. You have a right to proceed in pro per. I have not relieved you of that right. You may continue to proceed for the rest of the trial in pro per. I have a right to control the proceedings. You do not have a right to directly examine your children. The law allows your children to be examined in chambers for their protection. I have appointed counsel for you for the purpose of examining your children. I will never allow you in chambers to examine your children, so your choices are to waive your right to examine your children or to agree to have appointed counsel. And those are the only two options available to you."

Father asked the court whether it found he had traumatized his sons because his son cried while testifying. The court explained: "Not because your son cried, because every response to a question as you progressed through the examination, it took progressively longer and longer for your son to respond. He went from a matter of a few seconds to five seconds to 10 seconds to 15 seconds to 20 seconds between responses. It was very, very delayed, probably up to 30 and sometimes even a minute. As you went into certain questions, especially when you erroneously told the child that I did not know what he thought or what his wishes were, because I have read reports that purport to contain his wishes, he sunk back in the chair, he cringed, his shoulders slumped forward, his head went down, he sat in the chair for a very long time, he became visibly very upset. As you continued to question him shortly for a little bit of period of time after that, he started crying.

First he was weeping, then he was crying openly, and he could not continue. I find you've traumatized your child."

Father continued to object, and raised numerous claims about the unfairness and bias in the court proceedings, the experts appointed by the court, the conduct of the Department and counsel for the children, and his problems with visitation. The court repeatedly asked father to focus simply on whether he wanted counsel appointed to question the children or wanted to waive their examination. Finally the court expressed its exasperation: "Mr. [W.], this was a yes-or-no question. Do you want to have the attorney or do you want to find the children--I mean in a minute I'm going to find you're not competent to represent yourself. In fact, you're probably on the other side of that line. You absolutely do not appear to have any understanding of the proceedings."

After a brief recess, father acquiesced to the appointment of attorney Thomas Szakall. The court told father it was considering whether to appoint Mr. Szakall just for the questioning of the children, or whether it would appoint him for all purposes, based on its concerns about father's competency to proceed in pro. per. A recess was taken so that father could meet Mr. Szakall.

When the hearing resumed, the court terminated father's pro. per. status and appointed Mr. Szakall to represent him for all purposes. The court explained: "I think that the way he has conducted the hearings in the last two days shows a lack of understanding of the proceedings and a refusal to follow the court's orders. And in the court's opinion, the record shows serious misconduct for terminating his pro per status." The court declared a mistrial and rescheduled the contested hearing for July 27, 2001.

On July 27, 2001, the court heard and denied father's *Marsden*[2] motion regarding attorney Szakall. During that hearing, father claimed the reason he was relieved of his pro. per. status was the court's misconduct and errors. The court corrected him: "Part of the reason, in fact the main reason that you were relieved of your pro per status is because your continual persistence in revisiting the same things over and over and over again rose to the level of severe misconduct."

The contested hearing proceeded that day with the testimony of social worker Kathleen Petersen. Arya and Ghana each testified in chambers. Attorney Szakall's examination of these witnesses included questions prepared by father.

Father brought a second *Marsden* motion on the next court day, based in part on his attorney's failure to confer with him during the questioning of the children, and also on his attorney's refusal to file a new section 388 petition. The court explained that it was currently hearing a section 388 motion, and that it would not consider another petition at that time. The court asked counsel whether his questioning of the children was based on father's list of questions, and counsel stated it was, and that he had asked all the questions from that list which he considered appropriate and relevant.

The court found no grounds to relieve Mr. Szakall and denied the motion, explaining to father: "You are being very well represented, and you may not be happy with it, but he is following the law. That is his job. There may be things you'd like him to bring up. I've already made a lot of rulings, and he, as a lawyer, is obligated to follow those rulings. Part of the reason--that's one of the main reasons you were relieved of your pro per status is your absolute refusal to follow the court's ruling to such a point that you completely disrupted the proceedings.

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[2] *People v. Marsden* (1970) 2 Cal.3d 118.

We spent every hearing going over the same things that I had previously ruled on such that you came and abused your privilege, so I'm not going to grant the motion."

The contested review hearing proceeded on August 1, August 9, and August 27, 2001, with attorney Szakall representing father. Witnesses included Dr. Stephen Strack, father's treating psychologist since 1994; Reverend Richard Byrd, a visitation monitor during a troublesome visitation incident; mother; and father. At the conclusion of the proceedings the court terminated dependency court jurisdiction with an exit order granting mother primary physical and legal custody, with regularly scheduled monitored visits for father in accordance with specific visitation guidelines. Father was ordered not to come within one hundred yards of the children, their home, or their school (except during regularly scheduled school events or appointments). Father appeals from these orders.

DISCUSSION

Father claims the trial court abused its discretion in revoking his right to appear in pro. per. We disagree.

While there is no constitutional right to self-representation in dependency proceedings, a parent does have a statutory right to self-representation under section 317. (*In re Angel W.* (2001) 93 Cal.App.4th 1074, 1082-1084.)

The right to self-representation is not absolute; a pro se parent does not have the right to intentionally disrupt or delay the proceedings. (*In re Angel W., supra*, 93 Cal.App.4th at p. 1084, citing *Faretta v. California* (1975) 422 U.S. 806, 834, fn. 46.) The mere possibility of disruption or delay is not a sufficient ground to deny self-representation. (*In re Angel W., supra*, 93 Cal.App.4th at p. 1085.) The trial court must determine whether the parent "is and will remain so disruptive,

obstreperous, disobedient, disrespectful or obstructionist in his or her actions or words as to preclude the exercise of the right to self-representation." (*People v. Welch* (1999) 20 Cal.4th 701, 735.) The right to self-representation may be terminated where a litigant is unable to abide by rules of procedure and courtroom protocol. (*People v. Rudd* (1998) 63 Cal.App.4th 620, 632.) The trial court possesses much discretion when it comes to terminating a defendant's right to self-representation and the exercise of that discretion "'will not be disturbed in the absence of a strong showing of clear abuse.'" (*People v. Welch*, *supra*, 20 Cal.4th at p. 735, quoting *People v. Davis* (1987) 189 Cal.App.3d 1177, 1201; *In re Angel W., supra,* 93 Cal.App.4th at p. 1085.)

We find the court's exercise of discretion in this case well supported by the record. While appearing in pro. per., father made disrespectful remarks to counsel for the children; he repeatedly accused the Department and its social workers of misconduct; and he delayed the proceedings by refusing to focus on the relevant time period, revisiting events and rulings that were no longer pertinent, and refusing to answer the questions posed by the court. On one occasion, the court recessed a hearing briefly because of father's failure to limit his inquiry to the period in question and his disrespect to the court when he was corrected.

Father's disrespect for the court and counsel and his inability to abide by courtroom procedures and protocol interfered with the orderly taking of relevant evidence, and caused delay and disruption in the resolution of the pending matters. On this record, we find no abuse of discretion in the court's decision to terminate his pro. per. status.

We also find no prejudice from the court's decision. "Since the right of self-representation in a dependency proceeding is statutory rather than constitutional,

denial of the right is analyzed under the ordinary principles of harmless error." (*In re Angel W.*, *supra*, 93 Cal.App.4th at p. 1085.)

In this case, father suffered no harm from revocation of his pro. per. status. Attorney Szakall represented him aggressively, examining witnesses in accordance with the questions prepared by father and pursuing issues in accordance with father's instructions. He elicited a great deal of favorable evidence from witnesses regarding father's parenting skills and stability. Moreover, father testified on his own behalf, and the court allowed counsel extra leeway during father's testimony to facilitate presentation of his case.

Father claims he was prejudiced because he would have called several witnesses to testify as to the nature of his relationship with his children, and his appointed counsel did not do so. The court heard positive testimony from father and from both children regarding this relationship. The court would not have made different orders if additional witnesses had been called on this issue.

Father also claims he was more familiar with the record than was his appointed counsel. It is evident from the record that appointed counsel had become well versed in the record before the hearing, and that father assisted counsel in identifying important areas of inquiry.

We find neither error nor prejudice from the court's termination of father's right to self-representation in this case.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED

EPSTEIN, J., Acting P.J.

We concur:

HASTINGS, J.

CURRY, J.